CONFIDENTIAL COMMUNICATION FROM COUNSEL

PROPOSED ACTION PLAN FOR OSHA IAQ/ETS RULEMAKING

1) **Introduction:** This outline proceeds on the belief that feasible objectives should be sought that will minimize the impact of burdensome and inappropriate government action in the regulation of ETS in the workplace.

2) **Objective:** An OSHA standard that regulates Indoor Air Quality (IAQ) (including workplace ETS) without containing separate provisions singling out ETS exposure per se or smoking behavior/activity in the workplace. This would take the form of a standard relying principally on improved general ventilation and improved maintenance of ventilation systems (see also Appendix A). Conceptual elements of a ventilation-based IAQ standard include the following:

   a. Provisions requiring employers to perform surveys of the workplace to identify indoor air contaminants present and to develop an overall compliance plan for maintaining "acceptable" IAQ that includes the elements contained in b - g, below.

   b. Provisions requiring places of employment covered by the standard to provide a single specified fresh air ventilation rate that OSHA concludes will substantially reduce levels of indoor air contaminants for common work areas. The 1989 ventilation standard adopted by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) would provide the basis for such provisions.

   c. Provisions requiring ventilation systems to be operated in accordance with design specifications and to be properly maintained, including compliance with the ASHRAE filtration standard.

   d. Provisions for specified types of filtration equipment under certain circumstances (e.g., hard to ventilate or heavily contaminated areas).

   e. For buildings in which the general ventilation improvements required by the standard prove infeasible, or as a possible supplement to compliance with such requirements, an OSHA standard might set certain IAQ parameters (e.g., CO_2 and particulate levels as IAQ surrogates; temperature and relative humidity levels) and allow employers discretion to select combinations of control strategies (e.g., ventilation, filtration, source control) to meet these parameters.

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f. Provisions allowing extended compliance periods and alternative interim compliance strategies (e.g., specified filtration equipment, more frequent maintenance) for older buildings that would require significant modifications of existing ventilation systems.

g. Provisions allowing alternative compliance strategies (e.g., specified filtration equipment, more frequent maintenance) for older, poorly ventilated buildings in which installation or replacement of ventilation systems meeting the standard would be infeasible.

3) If OSHA decides that an IAQ standard similar to that described in 2), above, must also contain special provisions for ETS, the following provisions for accommodating smoking in the workplace will be considered (in descending order of acceptability):

a) A requirement that for "special circumstances," e.g., where employers have established smoking lounges and for other areas or situations designated in the standard in which particularly high levels of specified indoor air contaminants are likely to be present, employers must provide a higher ventilation rate (but not from a separate ventilation system) than would be required for common areas (based on the provisions of the 1989 ASHRAE standard) and/or provide special filtration systems for the particular contaminants present.

b) A requirement that employers designate separate smoking "areas," with no requirement for separate rooms with enhanced ventilation rates.

c) A requirement that employers provide separate smoking lounges that have a higher ventilation rate (60 cfm) than common areas, but that allows the increased ventilation to be supplied by "transfer air." Such a requirement, while perhaps technologically feasible, would entail economic burdens that would encourage employer smoking bans.

4) Note: The industry will oppose any standard that unfairly imposes an outright smoking ban in any form. In addition, no standard should be unfairly imposed that would require separately ventilated (i.e., separate fresh air intake and exhaust) smoking areas (with or without enhanced ventilation rates), because such a standard would require extensive and very costly modifications to the HVAC systems of many buildings and may therefore provide an incentive to many employers to impose an outright ban.

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5) **Probable OSHA Actions/Timetable:**

a.	Development of RFI/ANPR -- (See also Appendix B)	In progress
b.	Assistant Secretary/Policy Review Board clearance of RFI/ANPR --	May/June 1991
c.	Consultation with OMB --	May/June 1991
d.	Publication of RFI/ANPR --	June 1991
e.	Comment period --	90 - 120 days
f.	Publication of proposed standard --	Fall 1992 to Spring 1993
g.	Public hearings --	Spring/Summer 1993
h.	Final standard issued --	Fall/Winter 1994

6) **Necessary Steps for Achieving a Procedure Fair to the Industry:**

a. Prior to the issuance of the RFI/ANPR, evaluate the current OSHA rulemaking docket materials and determine critical deficiencies (April/May).

b. Prior to the issuance of the RFI/ANPR, submit to the OSHA docket available evidence illustrating and supporting the primary objective for an OSHA standard, including evidence regarding low workplace ETS levels, effectiveness of ventilation, risks from other indoor air constituents. Meet with OSHA as appropriate to discuss the submissions (April/May).

c. Prior to the issuance of the RFI/ANPR, develop and submit to OSHA a list of questions for inclusion in the RFI/ANPR designated to elicit information and data supporting (or at least relevant to) the primary objective. Meet with OSHA as appropriate to discuss the submissions (May).

d. Monitor the progress of the draft RFI/ANPR within the Labor Department and, where appropriate, provide relevant information regarding its content (April-June).

e. Continue to monitor the progress of the Action on Smoking and Health (ASH) litigation and its impact on OSHA decision-making (Ongoing).

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f. Continue to monitor the progress of the National Institute for Occupational Safety and Health Current Intelligence Bulletin (CIB) on ETS and its impact on OSHA decision-making; consider meetings with OSHA officials to attempt to point out deficiencies of the CIB (April/May).

g. Monitor and, where appropriate to further the primary objective with respect to the OSHA rulemaking, participate in the congressional deliberations and proceedings on the IAQ bills (Ongoing).

h. Provide support in upcoming hearings to be conducted by Congressman Waxman on IAQ issues (Ongoing).

i. Continue to monitor EPA activities and the potential impact of those activities on OSHA decision-making (Ongoing).

j. Evaluate the existing research on critical issues such as workplace ETS exposures, effectiveness of ventilation on reducing ETS levels, and risks from other indoor air constituents (April/May).

k. Based on that evaluation, determine what additional research should be performed by or with the support of the industry and start work on these projects (May/June). (See also Appendix A)

l. Discuss with OSHA the industry's research plans, elicit, where possible, OSHA's support for and involvement in those research activities, and initiate work on these OSHA-related projects (June/July).

m. Monitor closely the activities of ASHRAE and other key private organizations dealing with issues such as ventilation that may have an impact on OSHA's work on IAQ (Ongoing).

n. Maintain contact with the Office of Science and Technology Policy (OSTP) as appropriate to encourage the involvement of OSTP, as necessary, on critical issues of science (and science policy) (Ongoing).

o. Following the issuance of the RFI/ANPR, coordinate an industry submission to OSHA that responds to the issues raised and fully describes the industry's position on what an OSHA proposed standard should contain, together with supporting evidence (June/August).

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